



Declassified\*  
AS/Jur (2020) 05  
4 February 2020  
ajdoc05 2020

## Committee on Legal Affairs and Human Rights

# Implementation of the judgments of the European Court of Human Rights, 10<sup>th</sup> report: Russian Federation

### Information note

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#### 1. Introduction

1. Since the year 2000, the Parliamentary Assembly has taken a close interest in the implementation of the judgments of the European Court of Human Rights (“the Court”).<sup>1</sup> Following its latest resolution on this subject ([Resolution 2178 \(2017\)](#)) it decided “to remain seized of this matter and to continue to give it priority”.<sup>2</sup> Consequently, on 1 October 2019, the Committee on Legal Affairs and Human Rights appointed me its sixth successive rapporteur on this subject after the departure of its previous rapporteur, Mr Evangelos Venizelos (Greece, SOC), so I have the honour to continue his work. When Mr Venizelos was still the rapporteur, the committee held two hearings with experts on 24 April 2018 and 9 October 2018. At its meeting on 9 October, the committee authorised my predecessor to hold exchanges of views with the head of the national delegations to the Assembly of ten countries with the largest number of judgments under examination (at various stages of execution) by the Committee of Ministers: the Russian Federation, Turkey, Ukraine, Romania, Italy, Greece, the Republic of Moldova, Bulgaria, Hungary and Azerbaijan. This classification was drawn up on the basis of the [2017 Committee of Ministers Annual report](#) on supervision of the execution of judgments and decisions of the European Court of Human Rights (published in March 2018) relating to the situation as at 31 December 2017. In April 2019, the Committee of Ministers published its [12<sup>th</sup> Annual report](#) on this subject. According to the statistics in this latest report, the following countries had the largest number of cases pending before the Committee of Ministers as at 31 December 2018: the Russian Federation (1585), Turkey (1237), Ukraine (923), Romania (309), Hungary (252), Italy (245), Greece (238), Bulgaria (208), Azerbaijan (186) and the Republic of Moldova (173). Accordingly, compared with the end of 2017, the ranking order has changed slightly but not the countries concerned.

2. On 22 January 2019, the committee held an exchange of views on the implementation of judgments against Turkey (with the participation of Mr Mustafa Yeneroğlu, member of the Turkish delegation and experts from the Turkish Ministry of Justice) and a discussion on the implementation of judgments against Ukraine (in the absence of the head of the Ukrainian delegation). On 9 April 2019, the committee also held two exchanges of views on this subject, one with the head of the Hungarian delegation, Mr Zsolt Németh, and the other with the head of the Italian delegation, Mr Alvisè Maniero. On 10 December 2019, in Paris, a hearing with the participation of Mr Titus Corlăţean (Romania, SOC) took place and the committee decided to hold an exchange

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\* Document declassified by the Committee on 28 January 2020.

<sup>1</sup> The first report was approved by our committee on 27 June 2000; [Doc. 8808](#), rapporteur Mr Erik Jurgens. On the basis of this report, the Assembly adopted [Resolution 1226 \(2000\)](#). Since 2000, it has adopted nine reports and resolutions and eight recommendations relating to the implementation of the judgments of the European Court of Human Rights.

<sup>2</sup> [Resolution 2178 \(2017\)](#) adopted by the Assembly on 29 June 2017, paragraph 12. Reference No. 4313 of 30 May 2017.

of views with the head of the Russian delegation to the Assembly at its forthcoming meeting. This document will therefore focus on the implementation of judgments against the Russian Federation.

3. According to the [2018 Annual report of the Committee of Ministers on the supervision of judgments and decisions of the European Court of Human Rights](#) (“the 12th annual report”), as at 31 December 2018 there were 1585 judgments pending against the Russian Federation before the Committee of Ministers (at various stages of execution), which ranked that country first among the states with the largest number of unexecuted judgments. According to the latest data from the Department for the Execution of Judgments of the European Court of Human Rights, the Committee of Ministers is looking at 1683 cases concerning the Russian Federation, including 217 leading cases.<sup>3</sup>

4. In his report on the implementation of judgments of the European Court of Human Rights and the appendix to it, our former colleague Mr Pierre Yves Le Borgn’ (France, SOC) highlighted the non-payment of just satisfaction awarded by the Court in the judgment *OAO Neftyanaya Kompaniya Yukos* and seven principal cases/groups of cases the implementation of which was problematic and which were still subject to the Committee of Ministers’ enhanced supervision procedure.<sup>4</sup> These were cases concerning:

- non-enforcement of domestic judicial decisions and lack of an effective remedy in this respect (*Gerasimov and Others*),
- poor conditions in particular in pre-trial detention centres and lack of an effective remedy in this respect (*Kalashnikov and Ananyev and Others*),
- irregularities surrounding detention on remand (*Klyakhin*),
- torture and ill-treatment in police custody and lack of effective investigation in this respect (*Mikheyev*),
- various violations of the European Convention on Human Rights (“the Convention”) relating to the actions of the security forces in the Chechen Republic (*Khashiyev and Akhayeva*),
- various violations of the Convention relating to extraditions (*Garabayev*),
- repeated bans on LGBTI marches (*Alekseyev*), and
- violation of the right to education of children and parents from Latin script schools in the Transnistrian region of the Republic of Moldova (*Catan and Others*).

5. In his report, Mr Pierre-Yves Le Borgn’ pointed out that since the 2015 report by his predecessor Mr Klaas de Vries (Netherlands, SOC)<sup>5</sup> the examination of cases concerning violations of the principle of legal certainty on account of quashing of final domestic judgments through the supervisory review procedure (*Ryabykh v. Russian Federation*<sup>6</sup> and 112 similar cases) and of 234 cases concerning non enforcement of domestic judicial decisions (*Burdov v. Russian Federation (No. 2)*<sup>7</sup> and 234 similar cases) was closed by the Committee of Ministers. This document will therefore examine in detail the cases pending before the Committee of Ministers already mentioned in that report and will refer to other cases examined under the Committee of Ministers’ enhanced procedure.

6. In February 2018, Mr Venizelos sent a letter to the heads of the national delegations to the Assembly to ask them how the recommendations in [Resolution 2178 \(2017\)](#) had been/were being implemented. In particular, he wanted to know how the national parliaments of the Council of Europe member States had reacted to these recommendations. No answer was provided by the delegation of the Russian Federation.

## **2. Non-enforcement of domestic judicial decisions and lack of an effective remedy in this respect**

7. The *Gizatova v. Russia*<sup>8</sup> judgment concerns the non-enforcement or lengthy enforcement of final domestic judicial decisions, violations of the right to peaceful enjoyment of property and the lack of an effective remedy (violations of Articles 6 para. 1, Article 1 of Protocol No. 1 and Article 13 of the Convention). In this group of cases, information is awaited concerning individual measures in some cases in which the domestic judgments had not been implemented when the Court gave its judgment.<sup>9</sup> As regards general measures,

<sup>3</sup> As at 17 December 2019, [Country Factsheet: Russian Federation](#).

<sup>4</sup> [Doc. 14340](#) of 12 June 2017.

<sup>5</sup> [Doc. 13864](#) of 9 September 2015.

<sup>6</sup> Application No. 52854/99, judgment of 24 July 2003, and final resolution CM/ResDH(2017)83, 10 March 2017.

<sup>7</sup> Application No. 33509/04, judgment of 15 January 2009, and final resolution CM/ResDH(2016)268, 20 September 2016.

<sup>8</sup> Application No. 5124/03, judgment of 13 May 2005.

<sup>9</sup> See [Case description](#) in HUDOC-EXEC. The information on the cases examined in this document comes from the database [HUDOC-EXEC](#).

information is awaited on outstanding issues, as the issue of non-enforcement of domestic judgments concerning obligations in kind is examined in the context of the judgment *Gerasimov and Others v. Russia*<sup>10</sup>, which is considered by the Committee of Ministers under the standard procedure.<sup>11</sup> Moreover, the Committee of Ministers monitors the implementation of the judgment *Volokitin and Others*,<sup>12</sup> which concerns the State's failure to redeem the 1982 State loan bonds which are in the applicants' possession. (violation of Article 1 of Protocol No. 1). Referring to Article 46 of the Convention, the Court concluded that there was a structural problem stemming from the authorities' continued failure to implement the entitlement of the bondholders to some form of compensation and to execute its earlier judgments concerning the same issue.

### 3. Poor conditions in particular in pre-trial detention centres and lack of an effective remedy in this respect (*Kalashnikov* group and other cases)

8. The *Kalashnikov*<sup>13</sup> group of cases concerns, in particular, poor conditions of pre-trial detention in the remand centres ("SIZO") under the authority of the Federal Penitentiary Service (FSIN) (violations of Article 3) and the lack of an effective remedy in this respect (violations of Article 13). In January 2012, in its pilot judgement *Ananyev and Others v. Russia*,<sup>14</sup> the Court highlighted the structural problem existing of overcrowding in the Russian's pre-trial detention centres, calling upon the State to implement several measures in order to solve the problem. Some cases also raise specific problems related to conditions of detention (in particular in correctional colonies, medical colonies, prison hospitals and disciplinary cells), inadequate medical care and conditions of detention incompatible with detainees' disabilities (violations of Article 3).<sup>15</sup>

9. As regards *individual measures*, at its 1332<sup>nd</sup> meeting (DH) in December 2018, the Committee of Ministers closed their supervision in 136 cases of this group.<sup>16</sup> Furthermore, at its 1348<sup>th</sup> meeting (4-6 June 2019) (DH), when this group of cases was examined for the last time, it decided to close the supervision of other 12 cases, as the issue of adequate medical care and supplies had been resolved in respect of a number of applications still in detention.<sup>17</sup> At the same meeting, it invited the authorities to provide detailed information in the remaining cases in order to clarify how the shortcomings identified by the Court had been addressed and to clarify some outstanding issues concerning the conditions of detention of disabled applicants.<sup>18</sup>

10. Concerning *general measures*, at its 1288<sup>th</sup> meeting (DH) in June 2017<sup>19</sup> and its 1348<sup>th</sup> meeting (DH) in June 2019<sup>20</sup>, the Committee of Ministers welcomed the various measures taken to improve the material conditions of detention. At its 1348<sup>th</sup> meeting (DH), it welcomed the measures taken to improve the conditions of detention of disabled persons and those taken to reduce overcrowding, notably through reducing recourse to pre-trial detention and to custodial sentences, and the reduction by over 30 per cent in the numbers of both remand and convicted prisoners.<sup>21</sup> However, it noted with concern that the Court continued to deliver judgments concerning overcrowding and asked for information on the measures taken to solve this problem.<sup>22</sup> As the Russian authorities had not published the recent reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in respect of their country, the Committee of Ministers stressed once again the importance of publishing such reports.<sup>23</sup>

11. As regards the issue of judicial remedies, a preventive remedy was introduced in the 2015 Code of Administrative Procedure (CAP) and on 25 December 2018 the Supreme Court adopted a Plenum ruling clarifying its use for the lower courts, taking into account international and the Court's standards related to poor

<sup>10</sup> Application No. 29920/05, judgment of 1 July 2014.

<sup>11</sup> See [Case description](#) in HUDOC-EXEC.

<sup>12</sup> Application No. 74087/10+, judgment of 3 July 2018. The judgment concerns 14 applicants altogether.

<sup>13</sup> Application No. 47095/99, judgment of 15 July 2002, and 172 similar cases (including *Ananyev and Others*), as of June 2019, see list of cases [CM/Notes/1348/H46-23-add](#).

<sup>14</sup> Application No. 42525/07 and others, judgment of 10 January 2012.

<sup>15</sup> See, in particular, the judgment *Amirov v. Russian* (application No. 51857/13, judgment of 27 November 2014), in which the Court found *inter alia* that, the applicant, a paraplegic, had been exposed to prolonged mental and physical suffering diminishing his human dignity, and indicated to the authorities, under Article 46, the individual measures to be taken.

<sup>16</sup> Resolution [CM/ResDH\(2018\)455](#), 12 December 2018.

<sup>17</sup> Resolution [CM/ResDH\(2019\)151](#), 6 June 2019.

<sup>18</sup> [CM/Del/Dec\(2019\)1348/H46-23](#), 6 June 2019, items 3 and 4.

<sup>19</sup> [CM/Del/Dec\(2017\)1288/H46-24](#), 7 June 2017, items 4 and 5.

<sup>20</sup> *Supra* note 18, item 6.

<sup>21</sup> *Ibid*, items 7 and 8.

<sup>22</sup> *Ibid*, item 9.

<sup>23</sup> *Ibid*, item 6.

conditions of detention. These clarifications concerned mainly distribution of the burden of proof, the power of the courts to assist prisoners in collecting evidence under the procedure laid down in the CAP and reduction of court fees. They have been welcomed by the Committee of Ministers. However, as several questions remained outstanding, the authorities have been asked to provide further information about the functioning of the remedy, and in particular the number of complaints lodged with the courts and measures taken to enforce court decisions.<sup>24</sup> As regards compensatory remedy, on 17 May 2019, the draft legislation was tabled with the State Duma. It will allow to obtain compensation through the CAP procedure and therefore simplify the procedures, by creating a possibility to lodge simultaneously a complaint about poor conditions of detention and a claim for compensation.<sup>25</sup> Moreover, courts are already granting compensation for poor conditions of detention on the basis of the CAP. However, some problems have been signalled by the NGO Public Verdict Foundation.<sup>26</sup> The Committee of Ministers welcomed the above developments, called on the authorities to adopt the said law as soon as possible and asked for some clarifications.<sup>27</sup> In December 2019, the law was adopted and will enter into force on 27 January 2020.<sup>28</sup> As regards non-judicial remedies, the Committee of Ministers welcomed the information about the prosecutorial, departmental and public monitoring of conditions of detention and invited the authorities to provide further information concerning the work of the public monitoring commissions.<sup>29</sup>

12. Besides this group of cases, the Committee of Ministers examines under the enhanced procedure other cases concerning similar issues. The *Fedotov* group of cases<sup>30</sup> concerns poor material conditions of detention in temporary police holding facilities for criminal suspects (“IVS”) under the authority of the Ministry of the Interior (violations of Article 3). In many of these cases, the Court also found a lack of effective remedy in this respect and a lack of effective investigation (violations of Article 13). A comprehensive action plan/report is awaited for this group of cases. In the *Buntov v. Russia* judgment<sup>31</sup>, the Court found a substantive and procedural violation of Article 3 of the Convention as the applicant had been tortured in January 2010, while held in an isolation cell in a correctional colony, and the investigation into this incident was ineffective. The issue of individual and general measures in this case was examined at the 1340<sup>th</sup> and 1355<sup>th</sup> meetings (DH) of the Committee of Ministers respectively in March and September 2019.<sup>32</sup> Moreover, the case *Svinarenko and Slyadnev v. Russia*<sup>33</sup> concerns mainly the applicants’ degrading treatment on account of their confinement in metal cages in courtrooms during criminal proceedings against them or in remand prison for the purposes of participation, via video link, in hearings concerning detention (violations of Article 3). The Committee of Ministers examined it at its 1348<sup>th</sup> meeting (DH) in June 2019.<sup>34</sup> Moreover, it also examines the implementation of *Tomov and Others v. Russia*,<sup>35</sup> a new pilot judgment concerning poor conditions of transport between detention facilities and the lack of an effective remedy in this respect (violations of Articles 3 and 13). The Court gave the Russian authorities 18 months to set up effective domestic remedies with both preventive and compensatory effects. Finally, the Committee of Ministers supervises the implementation of the judgment *Igranov and Others*<sup>36</sup>, concerning the impossibility for incarcerated applicants complaining about poor conditions of detention to attend court hearings in civil cases to which they were parties (violation of Article 6 § 1). The Court gave some indications concerning general measures under Article 46 of the Convention.

#### 4. Irregularities surrounding detention on remand (*Klyakhin* group)

13. The *Klyakhin* group of cases<sup>37</sup>, concerns various violations of the right of the applicants to liberty and security in the context of detention on remand (Article 5 of the Convention), and mainly the failure of the domestic courts to adduce relevant and enough reasons to justify the applicants’ continuing detention on

<sup>24</sup> Ibid, item 10.

<sup>25</sup> Action plan [DH-DD\(2019\)473](#), 30 April 2019, p. 8.

<sup>26</sup> See its communication to the Committee of Ministers; [DH-DD\(2019\)517](#) of 9 May 2019.

<sup>27</sup> Supra note 18, items 11-13.

<sup>28</sup> See official information about the adoption of the law on the website of the State Duma (in Russian only): <https://sozd.duma.gov.ru/bill/711788-7>

<sup>29</sup> Supra note 18, item 14.

<sup>30</sup> *Fedotov v. Russia*, application No. 5140/02, judgment of 25 October 2005.

<sup>31</sup> Application No. 27026/10, judgment of 5 June 2012.

<sup>32</sup> See the decisions adopted at these meetings: [CM/Del/Dec\(2019\)1340/H46-19](#) of 14 March 2019 and [CM/Del/Dec\(2019\)1355/H46-18](#) of 25 September 2019.

<sup>33</sup> Application No. 32541/08, judgment of 6 June 2019.

<sup>34</sup> [CM/Del/Dec\(2019\)1348/H46-26](#), 6 June 2019.

<sup>35</sup> Application 18255/10+ (six applications), judgment of 9 April 2019.

<sup>36</sup> Application 42399/13+ (nine applications), judgment of 20 March 2018.

<sup>37</sup> *Klyakhin v. Russia*, application No. 46082/99, judgment of 30 November 2004, and 102 other cases, see list the list of cases as at the 1362<sup>nd</sup> meeting (DH) in December 2019, [CM/Notes/1362/H46-25-app](#).

remand (violations of Article 5 para. 3). In some cases, the Court also found violations of other provisions of the Convention (in particular Article 6 para 1. of the Convention, Article 18 taken in conjunction with Article 5 and Article 1 of Protocol No. 1).

14. Several action plans have been submitted by the authorities for this group of cases,<sup>38</sup> which was examined by the Committee of Ministers for the last time at its 1362<sup>nd</sup> meeting (DH) on 3-5 December 2019.

15. As regards *individual measures*, at its 1318<sup>th</sup> meeting (5-7 June 2018) (DH), the Committee of Ministers declared closed the supervision of 123 cases from this group<sup>39</sup> and asked for more information in relation to the other applicants. Following the provision of additional information by the authorities, at its 1362<sup>nd</sup> meeting (DH) in December 2019, it decided to close the examination of additional 48 cases, in which the applicants were no longer in pre-trial detention and did not suffer from the consequences of other violations of the Convention.<sup>40</sup> Concerning the applicants who were still in detention at the time of the adoption of the Court's judgments, the Committee of Ministers asked the authorities " (...) to regularly provide information on whether any further extensions of detention on remand were based on relevant and sufficient reasons, additional to those found inadequate by the Court"<sup>41</sup> and, following complaints received from some applicants, requested clarification on how rapidly national judges deciding on detention were provided with translations of Court judgments and whether the legal status of such translations could be used in domestic proceedings without requiring any further certified translation.<sup>42</sup>

16. In the context of this group of cases, the Committee of Ministers also examines the issue of individual measures in the cases of *Pichugin*<sup>43</sup> (as regards violations of Article 6) and *Khodorkovskiy and Lebedev*<sup>44</sup> (as regards violation of Article 1 of Protocol No. 1). As regards Mr Pichugin (who has been serving, for 16 years, a life sentence following trials considered as unfair by the Court), the Committee of Ministers repeatedly expressed concerns about the lack of information on the reopening of Mr Pichugin's cases, in which the Supreme Court, without providing any adequate reasoning for its conclusion, found that the Convention violations did not influence the outcome of the whole case, and the absence of information on whether his second request for pardon was granted.<sup>45</sup> As regards Mr Khodorkovskiy, the lifting of an unlawful damage award of several million euros made in violation of his right to property is expected. Therefore, at its 1362<sup>nd</sup> meeting (DH), the Committee of Ministers once again exhorted the authorities to urgently adopt the necessary individual measures to erase the consequences of the violations for the applicants, and, in particular, to ensure Mr Pichugin's release.<sup>46</sup> It also instructed its Secretariat to prepare a draft interim resolution in case no tangible progress is achieved in his cases, at the latest for the 1377<sup>th</sup> meeting (DH) in June 2020.<sup>47</sup>

17. As regards *general measures* concerning Article 5 issues, the Committee of Ministers assessed the latest information provided by the authorities in December 2019. The Committee of Ministers welcomed the decrease in the number of remand prisoners by some 14% between 2016 and 2018, which was due to the fact that investigators submitted fewer requests for initial detention on remand and extensions. However, explanation was requested concerning the reasons of a high level of approval of investigators' requests by judges (for example, an approval rate of about 97% in respect of requests for extension of detention on remand).<sup>48</sup>

18. The Committee of Ministers also welcomed the most recent amendments to Article 109 of the Code of Criminal Procedure (CCP), which resolved the problem of unclarity of the law regulating extensions of detention for the purposes of studying the case-file. These amendments also oblige investigators to better substantiate their requests for detention on remand. The Committee of Ministers also encouraged the

<sup>38</sup> On 5 November 2015 ([DH-DD\(2015\)1171](#)), 23 February 2017 ([DH-DD\(2017\)345](#)), 22 August 2017 ([DH-DD\(2017\)880](#)), 29 August 2017 ([DH-DD\(2017\)936](#)) and on 28 October 2019 ([DH-DD\(2019\)1223](#)) as well as in the framework of execution of the pilot judgment *Ananyev and Others*.

<sup>39</sup> Resolution [CM/ResDH\(2018\)230](#), 7 June 2018.

<sup>40</sup> [Final Resolution CM/ResDH\(2019\)368](#) of 5 December 2019.

<sup>41</sup> Decision adopted at the 1362<sup>nd</sup> meeting (DH), [CM/Del/Dec\(2019\)1362/H46-25](#), 5 December 2019, item 6.

<sup>42</sup> *Ibid.*, item 7.

<sup>43</sup> *Pichugin v. Russia (No. 1)*, application No. 38623/03, judgment of 23 October 2012, and *Pichugin v. Russia (No. 2)*, application No. 38958/07, judgment of 6 June 2017.

<sup>44</sup> Application No. 11082/06, judgment of 25 July 2013.

<sup>45</sup> [CM/Notes/1362/H46-25](#).

<sup>46</sup> Decision adopted at the 1362<sup>nd</sup> meeting (DH), *op. cit.*, items 3 and 5.

<sup>47</sup> *Ibid.*, item 5.

<sup>48</sup> *Ibid.*, item 10.

authorities to “(...)continue with the incorporation of Article 5 principles,(...), directly in domestic law”.<sup>49</sup> In this context, it noted that in particular it is difficult to reconcile the current wording of Article 110 of the CCP with the principle that “the longer a person remains in pre-trial detention, the more substantial the reasons that need to be given by a judge when extending it”.<sup>50</sup> The Committee of Ministers also noted with interest the Supreme Court’s research and overviews of the Court’s practice, and thematic Ministerial and Inter-Ministerial meetings by the Investigative Committee, the Ministry of the Interior and the General Prosecutor’s Office, other awareness-raising activities, including those with the participation of the Council of Europe, and the introduction of the restraining order as another alternative measure to detention.<sup>51</sup> It also requested information on the measures envisaged or taken to address the issues of lengthy appeal proceedings and the lack of an enforceable right to compensation for violations of Article 5.<sup>52</sup>

## **5. Torture and ill-treatment in police custody and lack of effective investigation in this respect (Mikheyev group)**

19. The *Mikheyev* group of cases<sup>53</sup> concerns mainly torture or inhuman or degrading treatment and death in police custody, including ill-treatment motivated by the victim’s ethnic origin, and the lack of effective investigations in this respect (substantive and procedural violations of Articles 2 and 3 and, in *Makhasehvy* and *Antanyev and Others*, violation of Article 14 in conjunction with Article 3). It also concerns irregularities related to arrest and detention in police custody, notably arbitrary and unacknowledged detention during which the applicants were ill-treated (violations of Article 5 § 1), the use in criminal proceedings of confessions obtained in breach of Article 3 (violations of Article 6 § 1) and the lack of an effective remedy to claim compensation for the ill-treatment inflicted (violations of Article 13).

20. The Russian authorities provided extensive information on the measures taken in their action plans/report<sup>54</sup> and several communications were submitted by NGOs.<sup>55</sup> The Committee last examined these cases at its 1362<sup>nd</sup> meeting (DH) in December 2019.

21. As regards *individual measures* (which are described in document [H/Exec\(2019\)4](#)), no updated information has been submitted by the authorities, which the Committee of Ministers regretted at its 1362<sup>nd</sup> meeting (DH). Concerning violations of Article 3, out of 135 cases, only in two cases the police officers involved in the torture were convicted, receiving suspended cases, and in one case the perpetrators were found guilty but absolved from serving the sentence because of the statutory time-limit.<sup>56</sup> The Committee of Ministers “ (...) expressed grave concern in respect of the communications submitted by the applicants and their representatives concerning the failure to give effect to the Court’s judgments in several cases of this group” and therefore urged the authorities to ensure rapidly that criminal investigations are opened or resumed in those cases where the earlier investigation was found by the Court to be ineffective, provided that the crime alleged had not become time-barred.<sup>57</sup> It also stated that “(...) the significant delays and shortcomings in the elimination of defects established by the European Court send a counterproductive message of impunity” and “urged the authorities to address this problem without delay and to examine the possibilities for providing other forms of redress to the applicants affected” and to provide information about the individual measures adopted in all of the cases in this group.<sup>58</sup>

22. As regards *general measures*, additional consultations on the relevant reforms took place between the Ministry of the Interior, the Federal Penal Service in Moscow and the Committee of Ministers’ Secretariat in

<sup>49</sup> Ibid, item 11.

<sup>50</sup> Ibid. The literal interpretation of this provision is that the judge should extend pre-trial detention if the circumstances serving as a ground for the initial decision concerning it have not changed with the passage of time, which has been repeatedly criticised by the Court; see, for example, *Fedorenko v. Russia*, application No. 39602/05, judgment of 20 September 2011, para. 69.

<sup>51</sup> Supra note 45, items 9 and 12.

<sup>52</sup> Ibid, item 13.

<sup>53</sup> *Mikheyev v. Russia*, application No. 77617/01, judgment of 26 January 2006, and 133 similar cases. See list the list of cases as at the 1362<sup>nd</sup> meeting (DH) in December 2019 [CM/Notes/1362/H46-26-app](#).

<sup>54</sup> Action plans of 23 November 2010 ([DH-DD\(2010\)591](#)), of 16 August 2013 ([DH-DD\(2013\)933](#)) and of 26 December 2014 ([DH-DD\(2015\)44](#)). See also H/Exec(2015)4rev for a summary of this information and [DH-DD\(2019\)797](#), action report of 16 July 2019.

<sup>55</sup> See action plans [DH-DD\(2010\)385](#), [DH-DD\(2012\)598](#), [DH-DD\(2013\)92](#) and [DH-DD\(2013\)885](#).

<sup>56</sup> Case description in HUDOC-EXEC.

<sup>57</sup> Decision adopted at the 1362<sup>nd</sup> meeting, [CM/Del/Dec\(2019\)1362/H46-26](#), 5 December 2019, items 2 and 3.

<sup>58</sup> Ibid, item 4.

November 2019, which the Committee of Ministers welcomed at its 1362<sup>nd</sup> meeting (DH).<sup>59</sup> The Committee of Ministers also noted with interest the information submitted by the authorities in respect of the further improvements in the legislative and organisational guarantees against torture and ill-treatment, including:

- the legislative reinforcement of the right of an apprehended person to a telephone call and of the right of victims to special safety measures;
- the high-level interdepartmental meetings;
- the development of law-enforcement practice;
- the adoption of the Plenum ruling by the Supreme Court in 2018 and its awareness-raising measures;
- the efforts taken by the prosecutor's offices, the Investigative Committee and the Ministry of the Interior with a view to combatting police torture and ill-treatment, including dissemination of instructions and directions to their territorial directorates, their cooperation in the area concerned, their training measures, as well as the statistical information on their activities, and
- the measures to enhance public control, including through the Public Monitoring Commissions, with a view to prevention of torture and ill-treatment by the police.<sup>60</sup>

23. The Committee of Ministers examined the measures taken or envisaged to prevent and combat ill-treatment in police custody and to ensure the effectiveness of investigations into complaints of torture and inhuman and degrading treatment in police custody. As regards the former, it reiterated its call for "a strong zero-tolerance message at a high political level that ill-treatment by the police and the extraction of confessions by torture or other unlawful means will no longer be tolerated"<sup>61</sup> and invited the authorities to provide information about the measures adopted or planned to further improve the existing safeguards against torture and ill-treatment and their implementation.<sup>62</sup> As regards the issue of effectiveness of investigations, the Committee of Ministers asked the authorities "(...) to ensure that full-fledged criminal investigations, as opposed to pre-investigative inquiries, are opened into all such *prima facie* credible complaints in accordance with the Court's case-law", to clarify the scope of responsibility of the various investigative and verification bodies as regards complaints of police ill-treatment<sup>63</sup>, to comment on the information submitted concerning some shortcomings in the treatment of complaints and to provide new statistical data.<sup>64</sup> It also recalled that, according to the Court's case-law, the practice of suspending the sentences of police officers found guilty of torture or inhuman or degrading treatment "deprives criminal law of its deterrent effect" and invited the authorities to consider criminalising torture as a separate crime with no prescription period.<sup>65</sup>

24. Moreover, the Committee of Ministers reiterated its call on the authorities to provide information on the measures planned or taken concerning outstanding issues as regards the effectiveness of judicial review of investigations and the use at trial of confessions obtained under duress. In respect of judicial review, it also asked for information on how rapidly national judges were provided with translations of the Court's judgments and whether the legal status of such translations allowed them to be used in domestic proceedings without requiring any further certified translation from the parties.<sup>66</sup>

25. Recalling the long-standing nature of this problem since 2006 (the *Mikheyev* judgment), the Committee of Ministers regretted the lack of sufficient progress despite the measures taken. It called on the authorities to intensify their efforts, possibly taking advantage of the Council of Europe's cooperation programmes, and, once again, to agree to the publication of the reports of the CPT.<sup>67</sup>

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<sup>59</sup> Ibid, item 6.

<sup>60</sup> Ibid, item 5.

<sup>61</sup> Ibid, item 7.

<sup>62</sup> Ibid, item 8, for more information about the requested information.

<sup>63</sup> Ibid, item 9.

<sup>64</sup> Ibid, items 10 and 12.

<sup>65</sup> Ibid, item 11.

<sup>66</sup> Ibid, item 13.

<sup>67</sup> Ibid, item 14.

## 6. Various violations of the Convention relating to the actions of the security forces in the Chechen Republic (*Khashiyev and Akhayeva* group)

26. The *Khashiyev and Akayeva*<sup>68</sup> group of cases<sup>69</sup> concerns mainly violations resulting from, or relating to, actions of the Russian security forces during anti-terrorist operations occurred in the republics of the Northern Caucasus region – mostly in the Chechen Republic – between 1999 and 2006 (including killings or presumed killings, unjustified use of force, disappearances, unacknowledged detentions, torture and ill-treatment, unlawful search and seizure operations, destruction of property, and failure to co-operate with the Convention organs), and the lack of effective investigations into the alleged abuses and absence of effective domestic remedies in this respect (violations of Articles 2, 3, 5, 6, 8, 13, 38 and of Article 1 of Protocol No. 1). In the *Aslakhanova and Others* judgment, under Article 46 of the Convention, the Court gave some guidance concerning certain measures to be taken to address the systemic failure to investigate disappearances in the Northern Caucasus (specifically, to address the problem of searching missing persons and to effectively investigate known or presumed deaths of individuals and to punish those responsible). The judgments *Isayeva, Abuyeva and Others* and *Abakarova* concern the security operation conducted by Russian military forces between 4 and 7 February 2000 in the village of Katyr Yurt and during which the Russian forces used heavy aviation bombs and missiles, killing or wounding a large group of people; in the latter two judgments, the Court also gave indications under Article 46 of the Convention as to the measures to be taken. Several cases concern further similar violations which occurred after 2006 and are attributable mainly to the local and regional law-enforcement agencies (violations of Articles 2, 3, 5 and 13); in some cases, the impugned actions did not have any apparent link with anti-terrorist operations.

27. The Committee of Ministers examines separately violations which had occurred between 1999 and 2006 and those which occurred after 2006. At its 1324<sup>th</sup> meeting (DH) in September 2018, it focused on the cases concerning effectiveness of investigation of the events of 1999-2006 (mainly in the Chechen Republic),<sup>70</sup> after it had received an action plan specifically related to this issue.<sup>71</sup> In its decision adopted at that meeting,<sup>72</sup> the Committee of Ministers noted with interest the updated action plan but regretted that it had been submitted too shortly before the meeting. Concerning *individual measures*, it reiterated its “grave concern (...) at the longstanding absence of progress of the investigations in the majority of the 258 cases in this group, most of which concern disappearances of persons last seen under the control of the military or other state agents”.<sup>73</sup> It decided, however, to close the supervision of individual measures in four cases - *Abdurashidova, Estamirova, Taziyeva and Others* and *Trapeznikova* – in which information had been provided on the progress made in the investigations related to illegal killings.<sup>74</sup> In view of the many serious human rights violations found, the Committee of Ministers recalled the importance of preventing impunity, and also called on the competent authorities “(...) to use all possible means to reinvigorate investigations to overcome the obstacles created by the passage of time and ensure that alleged crimes are characterised so as to prevent undue prescription of criminal responsibility, in particular as regards the gravest crimes.”<sup>75</sup>

28. As regards *general measures*, the Committee of Ministers noted the information on measures taken to improve investigations: on “(...) better coordination between different authorities, awareness-raising and training, improving the regulatory framework, ensuring the independence of the investigations, creation of special operational and investigative groups, ensuring wide application by the investigators of a range of expert examinations, allowing investigators unimpeded access to military archives, implementation of a set of measures to ensure rights of the victims during the investigation, granting victims and/or their representatives the right to access non-confidential parts of investigation files, better possibilities to challenge investigative decisions before the higher investigation bodies, prosecutors and courts, to obtain the speeding up of investigations or compensation in case of undue delays as well as state protection during investigations and trial, including measures of safety and social support”. It instructed its Secretariat to prepare, in co-operation with the authorities, a detailed assessment of the effectiveness of these measures.<sup>76</sup>

<sup>68</sup> Application No. 57942/00 and others, judgment of 24 February 2005.

<sup>69</sup> See the complete list of 261 cases, supervised by the Committee, 1348<sup>th</sup> meeting (DH) of June 2019 – [CM/Notes/1348/H46-24-app](#).

<sup>70</sup> [CM/Notes/1324/H46-18](#)

<sup>71</sup> Of 24 August 2018, [DH-DD\(2018\)798](#).

<sup>72</sup> Decision adopted at 1324<sup>th</sup> meeting (DH), [CM/Del/Dec\(2018\)1324/18](#), 20 September 2018, item 2.

<sup>73</sup> *Ibid.*, item 3.

<sup>74</sup> Final Resolution [CM/ResDH\(2018\)373](#) of 20 September 2018.

<sup>75</sup> Decision adopted at 1324<sup>th</sup> meeting (DH), *op.cit.*, item 5.

<sup>76</sup> *Ibid.*, item 6.



29. At its 1348<sup>th</sup> meeting (DH) in June 2018, the Committee of Ministers examined 17 cases concerning violations after 2006<sup>77</sup> (violations of Articles 2, 3, 5 and 13 of the Convention) on the basis of an action plan related to these cases received on 30 April 2019<sup>78</sup> and additional information provided on 14 May 2019.<sup>79</sup> It regretted that the information had been provided beyond the established deadline, which made its assessment complicated.<sup>80</sup> As regards *individual measures*, it took note of “the comprehensive information available” about the measures taken by the authorities in order to “ensure the effectiveness of the investigations at issue in the Court’s judgments” and asked the authorities to continue to provide information on the developments concerning these cases and on the most recent cases, in which no information had been provided yet.<sup>81</sup> Nevertheless, the Committee of Ministers regretted that the investigations conducted had so far failed to establish all circumstances of the cases and the fate of the disappeared persons. It called on the authorities to continue the investigations in all cases, to take all possible measures to ensure their effectiveness and to establish the fate of the missing persons.<sup>82</sup>

30. As regards *general measures*, the Committee of Ministers noted that there was an overlap between the measures required for the cases from this subgroup and the pre-2006 cases examined earlier; however, this subgroup of cases had also some specificities related in particular to the continuing nature of the violations here at issue and the absence of apparent links with anti-terrorist operations in some cases. It welcomed the statistics provided about 25 complaints about alleged enforced disappearances involving state officials, resulting in the opening of one criminal case, but also expressed concern at these figures. Therefore, it asked for clarifications about the reasons for the refusals to open such investigations and about the guarantees of independence of the bodies receiving complaints vis-à-vis those possibly involved in the alleged acts and for updated statistics, including for the missing period between December 2016 and March 2017.<sup>83</sup> It recalled that the seriousness of this issue was underlined in the Court’s most recent judgments and a public statement of the CPT of 11 March 2019.<sup>84</sup> The Committee of Ministers also welcomed the measures aimed at ensuring wide-scale dissemination of information about the Court’s case-law and extended coordination meetings held in 2019, including in the Chechen Republic and the whole North Caucasus Federal District, in order to assess results achieved and outline ways for further improvements.<sup>85</sup> It invited the authorities to provide additional information on the measures taken or planned to prevent further similar violations, including by ensuring effective investigations into alleged kidnappings or enforced disappearances.<sup>86</sup>

31. The Assembly has always deplored the systematic human rights violations in the North Caucasus<sup>87</sup> and the Committee on Legal Affairs and Human Rights is now preparing a report on ‘The continuing need to restore human rights and the rule of law in the North Caucasus region’ (Rapporteur: Mr Frank Schwabe, Germany, SOC). A report on ‘Ending enforced disappearances on the territory of the Council of Europe’ (Rapporteur: Mr André Gattolin, France, NR) is also under way.

## **7. Various violations of the Convention relating to extradition and expulsion (*Garabayev* group and other cases)**

32. The *Garabayev v. Russia*<sup>88</sup> judgment and 79 similar other judgments<sup>89</sup> concern various violations of the Convention related to extradition (violations of Articles 3, 5, 13 and 34).

33. As regards violations of Article 5 para. 1 of the Convention, they are due to the absence of clear legal provisions on the procedure for ordering and extending detention with a view to extradition and the time-limits

<sup>77</sup> [CM/Notes/1348/H46-24-app](#), under “B”.

<sup>78</sup> DH-DD(2019)494, 2 May 2019.

<sup>79</sup> DH-DD(2019)550, 15 May 2019.

<sup>80</sup> Decision adopted at 1348<sup>th</sup> meeting (DH), [CM/Del/Dec\(2019\)1348/H46-24](#), 6 June 2019, item 2.

<sup>81</sup> *Ibid*, item 3.

<sup>82</sup> *Ibid*, item 4.

<sup>83</sup> *Ibid*, items 5- 8.

<sup>84</sup> <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-urges-the-russian-federation-to-carry-out-effective-investigations-into-allegations-of-torture-in-the-norther>

<sup>85</sup> Decision adopted at 1348<sup>th</sup> meeting (DH), *op.cit.*, item 10.

<sup>86</sup> *Ibid*, item 11.

<sup>87</sup> It examined these issued for the last time in its [Resolution 2157 \(2017\)](#) on ‘Human rights in the North Caucasus: what follow-up to [Resolution 1738 \(2010\)?](#)’ of 25 April 2017, based on a report by former Committee member Mr Michael McNamara (Ireland), [Doc. 14083](#).

<sup>88</sup> Application No. 38411/02, judgment of 7 June 2007.

<sup>89</sup> See the complete list of cases, supervised by the Committee, 1340<sup>th</sup> meeting of March 2019 – [CM/Notes/1340/H46-18-app](#).

for such detention, unreported and arbitrary arrest (*Iskandarov*), and detention beyond the time-limits allowed by domestic law (*Mukhitdinov*). The violations of Article 5 para. 4 relate to the lack of any mechanism to allow a person detained pending extradition to seek judicial review of the lawfulness of his/her detention, failure by the courts to address such person's arguments concerning the lawfulness of detention when examining his/her appeals and lengthy consideration of such appeals when a review did take place (usually upon a prosecutor's request to extend the detention).

34. In a significant number of judgments from this group, the Court also found that there would be a violation of Article 3 if the applicants were to be extradited to the requesting countries and of a violation of Article 13 as the domestic courts failed to scrutinise rigorously the applicants' allegations of such a risk of ill-treatment. Moreover, the proceedings for temporary asylum or for recognition of refugee status did not constitute an effective remedy capable of satisfying the requirements of Article 13 due to their lack of suspensive effect on enforcement of decisions on extradition and other forms of removal (*Allanazarova*).

35. In a number of other cases, the Court found that the applicants had been removed from the Russian territory despite the risks of ill-treatment (violation of Article 3). In six of these cases, it noted that the applicants could not have been abducted, disappeared or forcibly transferred without the knowledge and passive or active involvement of the Russian authorities (*Iskandarov*, *Abdulkhakov*, *Savriiddin Dzhurayev*, *Nizomkhon Dzhurayev*, *Ermakov* and *Kasymakhunov*). Moreover, in four cases (*Savriiddin Dzhurayev*, *Ermakov*, *Kasymakhunov* and *Mamazhonov*) the Court found that the authorities' failure to protect the applicants from exposure to the risk of torture and ill-treatment and to hold an effective investigation into the disappearance/abduction incidents was in violation of Article 3. As regards the problem of abductions/disappearances and forcible transfers to Tajikistan and Uzbekistan, under Article 46, the Court gave some guidance as to the general measures to be taken in the *Savriiddin Dzhurayev*<sup>90</sup> judgment. Moreover, in the *Shchebet* case, the Court found that the conditions of the applicant's detention in the transport police premises of Domodedovo airport in Moscow had been in breach of Article 3 of the Convention.

36. On 12 February 2019, the Russian authorities submitted an updated action plan<sup>91</sup>. As regards *individual measures*, information was provided on the situation of the applicants in the new Court's judgments, in particular on cancellation of extradition decisions and judicial decisions imposing punishment in the form of administrative expulsion, release of all applicants who were detained in temporary detention centres for foreign citizens and granting refugee status or temporary asylum. The authorities also stated that there was no risk for applicants located in the Russian Federation territory to be subject to a forced removal. Information on investigations related to the incidents and allegations of abductions and forced removals had been supplemented. During the last examination of this group of cases at its 1340<sup>th</sup> meeting (DH) (12-14 March 2019), the Committee of Ministers noted that the question of individual measures appeared to have been resolved with regard to 20 applicants who were no longer in detention with the purpose of extradition, nor appeared to suffer the consequences of other violations found by the Court. Therefore, the supervision of these cases has been closed.<sup>92</sup> The Committee of Ministers noted the information provided in the updated action plan and strongly urged the authorities to continue the investigations into the impugned incidents, taking fully into account the Court's findings (and in particular in the cases of *Abdulazhon Isakov* and *Azimov*). It also asked for information on the practice of visits to detained applicants removed from the Russian Federation in violation of Articles 3 and/or 34 of the Convention, notably by Russian diplomatic personnel.<sup>93</sup>

37. As regards *general measures*, the Committee of Ministers noted with interest the information on the reinforcement of the mechanisms aimed at preventing extradition procedures in violation of the Convention, and in particular the new 2018 Directive issued by the Prosecutor General (116/35) based on the legal positions of the Plenum of the Supreme Court in its Ruling of 14 June 2012 No. 11 and the case-law of the Court.<sup>94</sup> As regards the required legislative reforms, it took note of the adoption at the first reading of the draft law amending the Code of Criminal Procedure aimed notably at strengthening procedural safeguards in extradition cases and of the ongoing consideration of possible additional amendments to the Law on asylum to ensure automatic suspension of the execution of decisions on extradition, deportation or administrative expulsion of persons applying for temporary asylum or refugee status. In this context, it stressed the importance of taking into account the requirements stemming from the Convention.<sup>95</sup> It also noted with interest a number of additional

<sup>90</sup> Application No. 71386/10, judgment of 25 April 2013.

<sup>91</sup> DH-DD(2019)166, 13 February 2019.

<sup>92</sup> Final Resolution [CM/ResDH\(2019\)58](#) of 14 March 2019.

<sup>93</sup> Decision taken at 1340<sup>th</sup> meeting, CM/Del/Dec(2019)1340/H46-18, 14 March 2019, items 3-5.

<sup>94</sup> *Ibid*, item 6.

<sup>95</sup> *Ibid*, items 6 and 7.

measures (such as strengthening inter-agency coordination, the interaction with States requesting extradition and the dissemination to competent state bodies of the good practices in this field) and requested information about further developments concerning the execution of the cases from this group by 30 April 2019.<sup>96</sup>

38. The Committee of Ministers also welcomed the information on the closure of the detention cell in the transport police premises at Domodedovo airport in Moscow and decided to close the supervision of this aspect.<sup>97</sup>

39. Other cases concerning various violations of the Convention relating to expulsions are also being examined under the enhanced procedure. The *Kim v. Russia* group of cases<sup>98</sup> concerns different violations related to the arbitrary detention of stateless or foreign national applicants, pending removal from the Russian Federation (mainly violations of paras. 1 and 4 of Article 5).<sup>99</sup> Two other cases - *Alim v. Russia*<sup>100</sup> and *Gablshvili v. Russia*<sup>101</sup> cases - concern the administrative removal (expulsions) orders delivered against the applicants, foreign citizens, without taking due account of close family ties established in the Russian Federation (violations of Article 8). Similarly, in the *Liu (No. 2) v. Russia* judgment<sup>102</sup> and a few similar cases the Court found that the exclusion from the Russian territory of foreign applicants on national security grounds without sufficient procedural safeguards constituted a violation of Article 8 because of their family ties in Russia.<sup>103</sup>

40. The Committee of Ministers also examines the implementation of the Court's judgment in the inter-State case *Georgia v. Russian Federation (I)*.<sup>104</sup> It concerns the arrest, detention and expulsion from the Russian Federation of large numbers of Georgian nationals from the end of September 2006 until the end of January 2007 (violations of Article 4 of the Protocol No. 4 and of Articles 3, 5 paras. 1 and 4, 13 and 38 of the Convention).<sup>105</sup> The group of judgments *Berdzenishvili and Others v. Russia*<sup>106</sup> relates to the same events but in complaints submitted by individual applicants..

## **8. Repeated bans on gay prides and other public events (*Alekseyev, Bayev and Other and Lamashkin*)**

41. The *Alekseyev v. Russia* judgment<sup>107</sup> concerns the disproportionate interference with the applicant's right to freedom of assembly due to the repeated Moscow authorities' bans over a period of three years (2006-2008) on the holding of gay rights marches and pickets and the failure to assess adequately the risk to the safety of the participants and public order (violation of Article 11) and the lack of an effective remedy on account of the absence of any legal requirement on the authorities and the courts to give a final decision before the planned date of the march or the picketing (violation of Article 13 in conjunction with Article 11). The Court also found that the applicant was discriminated on the grounds of his sexual orientation (violation of Article 14 in conjunction with Article 11).

42. The case of *Bayev and Others v. Russia*<sup>108</sup> is related to violations of the right to freedom of expression and discrimination on account of fines imposed by domestic courts on the applicants in Ryazan, Arkhangelsk and St Petersburg between 2009-2012 for displaying banners considered to promote homosexuality among

<sup>96</sup> Ibid, items 8 and 10.

<sup>97</sup> Ibid, item 9.

<sup>98</sup> *Kim v. Russia*, application No. 44260/13, judgment of 17 July 2014; *Chkhikvishvili v. Russia*, application No. 43348/13, judgment of 25 October 2016 and *S.K. v. Russia*, application No. 52722/15, judgment of 14 February 2017.

<sup>99</sup> The Committee of Ministers examined them for the last time at its 1318<sup>th</sup> meeting (DH) in June 2018, [CM/Del/Dec\(2018\)1318/H46-19](#), 7 June 2018.

<sup>100</sup> Application No. 39417/07, judgment of 27 September 2011.

<sup>101</sup> Application No. 39428/12, judgment of 26 June 2014. It was examined for the last by the Committee of Ministers at its 1214<sup>th</sup> meeting (DH) on 4 December 2014, see decision adopted at that meeting [case No. 18](#).

<sup>102</sup> Application No. 29157/09, judgment of 26 July 2011.

<sup>103</sup> These cases were examined for the last time at the Committee of Ministers' 1331<sup>st</sup> meeting (DH) (04-06 December 2018). See the notes [CM/Notes/1331/H46-26](#) and the decision taken at that meeting, [CM/Del/Dec\(2018\)1331/H46-26](#), 6 December 2018.

<sup>104</sup> Application No. 13255/07, Grand Chamber judgments of 3 July 2014 (on the merits) and 31 January 2019 (just satisfaction).

<sup>105</sup> The Committee of Ministers examined them for the last time at its 1362<sup>nd</sup> meeting (DH), see [CM/Del/Dec\(2019\)1362/H46-23](#), 5 December 2019.

<sup>106</sup> Application No. 14594/07, judgment of 20 December 2016. See also two other cases from this group: *Dzidzava*, application No. 16363/07 and *Shioshvili and Others*, application No. 19356/07, judgments of 20 December 2016.

<sup>107</sup> Application No. 4916/07, judgment of 21 October 2010.

<sup>108</sup> Application No. 67667/09+, judgment of 20 June 2017.

minors, contrary to the regional (and then national) laws prohibiting such “propaganda” (violations of Article 10 and of Article 14 in conjunction with Article 10).

43. On 22 October 2018, the authorities provided a new action plan,<sup>109</sup> which contains information which they had previously provided and which had been assessed by the Committee of Ministers. Several NGOs made submissions, providing examples of local authorities’ refusals to allow public events in support of LGBTI persons’ rights.<sup>110</sup>

44. During the latest examination of these cases, at 1331<sup>st</sup> meeting (DH) (4-6 December 2018)<sup>111</sup>, the Committee of Ministers stressed, regarding the issue of *individual measures*, that the ensuring that the applicants could exercise their rights to freedom of assembly and expression was closely linked to the general measures. It also noted that it was not necessary to reopen the domestic proceedings in the cases considered in *Bayev and Others*, since the fines imposed had either not been enforced or had been compensated by the just satisfaction awarded by the Court.<sup>112</sup>

45. As regards *general measures*, the Committee of Ministers expressed again serious concern with regard to the continuous refusals by local authorities to allow the holding of LGBTI-related public events on the basis of the laws prohibiting “propaganda of non-traditional sexual relations among minors”.<sup>113</sup> For this reason, it invited the Russian authorities to consider their abrogation or their amendment in compliance with the Convention’s requirements and, in parallel, to continue to actively develop awareness-raising activities and judicial practice to ensure a Convention-compliant application of the regulations regarding freedom of assembly and expression with respect to LGBTI persons.<sup>114</sup> It noted with interest the recently adopted additional measures, including awareness-raising and other measures to promote tolerance towards LGBTI persons, and a Supreme Court Ruling of 26 June 2018 containing specific explanations as regards the organisation and conduct of public events in general, made in light of the Court’s case-law, as regards challenging decisions and acts (or omissions) of public authorities, as well as directing the courts towards delivery of well-reasoned decisions.<sup>115</sup> Lastly, it asked the authorities to provide statistics on developments in 2017-2018, including information on the effect of the above-mentioned Supreme Court Ruling on the protection of the Convention rights in question of LGBTI persons.<sup>116</sup>

46. Moreover, the *Lashmankin* group of cases<sup>117</sup> mainly concerns different violations of the right to freedom of assembly in different Russian cities in 2009-2013 (violations of Article 11, interpreted in the light of Article 10) and lack of an effective remedy in this respect (violations of Article 13 in conjunction with Article 11). The authorities presented an action plan on 16 April 2018,<sup>118</sup> which was assessed by the Committee of Ministers at its 1318<sup>th</sup> meeting (DH) (5-7 June 2018).<sup>119</sup> In addition, the Committee of Ministers examines the implementation of the *Navalnyy v. Russia* judgment<sup>120</sup>, in which the the Court found, inter alia, that the applicant’s persecution in two episodes (including arrests) had pursued an ulterior purpose, which was to “suppress that political pluralism which forms part of ‘effective political democracy’ governed by ‘the rule of law’” (violation of Article 18 in conjunction with Articles 5 and 11). Under Article 46, the Court gave some indications as to general measures to be taken.

## **9. Violation of the right to education of children and parents from Latin script schools in the Transnistrian region of the Republic of Moldova (*Catan and Others* group)**

47. The *Catan and others v. Russia*<sup>121</sup> case concerns the violation of the right to education of 170 children or parents of children from Latin-script schools located in the Transdnestrian region of the Republic of Moldova (“MRT”) (violation of Article 2 of Protocol No. 1). The Court found that there was no evidence of any direct

<sup>109</sup> [DH-DD\(2018\)1047](#), 24 October 2018.

<sup>110</sup> [DH-DD\(2018\)775](#), 8 August 2018 and [DH-DD\(2018\)1096](#), 9 November 2018.

<sup>111</sup> [CM/Del/Dec\(2018\)1331/H46-24](#), 6 December 2018.

<sup>112</sup> *Ibid*, items 3 and 2.

<sup>113</sup> *Ibid*, item 4.

<sup>114</sup> *Ibid*, items 7 and 8.

<sup>115</sup> *Ibid*, item 8.

<sup>116</sup> *Ibid*, item 9.

<sup>117</sup> *Lashmankin and Others v. Russia*, application No. 57818/08, judgment of 7 February 2017, and *Annenkov and Others*, application No. 31475/10, judgment of 25 July 2017.

<sup>118</sup> [DH-DD\(2018\)420](#), 18 April 2018.

<sup>119</sup> [CM/Del/Dec\(2018\)1318/H46-21](#), 7 June 2018.

<sup>120</sup> Application No. 29580/12, judgment of 15 November 2018 (Grand Chamber).

<sup>121</sup> Application No. 43370/04, judgment of 19 October 2012 (Grand Chamber).

participation by Russian agents in the measures taken against the applicants, nor of Russian involvement in or approbation for the “MRT”’s language policy in general. However, in its opinion, the Russian Federation exercised effective control over the “MRT” during the period in question and that by virtue of its continued military, economic and political support for the “MRT”, which could not otherwise survive, the Russian Federation incurred responsibility under the Convention for the violation in question.

48. Since December 2013, the Committee of Ministers repeatedly pointed out that in this case, according to the Court, Russia incurred responsibility under the Convention. However, according to the Russian authorities, the Court “applied its own ‘effective control’ doctrine, having attributed to Russia the responsibility for violation occurred in the territory of another state, to which the Russian authorities had no relation whatsoever, which created serious problems of practical implementation of this judgment”.<sup>122</sup> A series of roundtables and conferences was organised by them between 2015 and 2018, with the participation of national and foreign experts, to discuss “acceptable solutions for ways out of this situation”.<sup>123</sup> In 2018, the Court issued another judgment - *Bobeco and Others v. Russia*<sup>124</sup> - finding the same kind of Convention violation for another group of children.

49. At its 1362<sup>nd</sup> meeting (DH) in December 2019, the Committee of Ministers “firmly insisted” on “the unconditional obligation of every respondent State” under Article 46 paragraph 1 of the Convention to abide by final judgments.<sup>125</sup> It recalled the Russian authorities’ commitment to “arrive at an acceptable response as to the execution of this judgment” and its previous calls for submitting an action plan with concrete proposals and, noting the provided explanations, expressed regret that such a document was not submitted some seven years after the judgment had become final.<sup>126</sup> It “firmly urged” the authorities to provide an action plan by 31 March 2020 and, in its absence by that date, instructed the Secretariat to prepare a draft interim resolution (which would be the fourth in this case) for its 1377<sup>th</sup> meeting (DH) in June 2020.<sup>127</sup>

50. The Committee of Ministers has also started examining the implementation of the judgment *Mozer*<sup>128</sup>, concerning violations of the Convention which occurred in the Transnistrian region of the Republic of Moldova (Articles 3, 5, 6, 8, 9, 13, 34 and of Article 1 of Protocol No. 1).

## 10. *OAO Neftyanaya Kompaniya Yukos v. Russia*

51. In the *OAO Neftyanaya Kompaniya YUKOS v. Russia* case<sup>129</sup> the Court held that there had been various violations of the Convention (mainly of Article 6 and Article 1 of Protocol No. 1) and allocated a total amount of 1.8 billion euros to the shareholders of the applicant company by way of just satisfaction.

52. The Committee of Ministers is still awaiting an action plan with an indicative timetable for the payment of the just satisfaction, despite the fact that at its 1302<sup>nd</sup> meeting (DH) (5-7 December 2017) it welcomed the payment of the sum in respect of costs and expenses (i.e. 300 000 euros granted to the Yukos International Foundation). However, as the payment, which had been done with a delay, did not include default interest, at its 1340<sup>th</sup> meeting (DH) (12-14 March 2019), the Committee of Ministers urged the Russian authorities to rapidly proceed with the payment of interest.<sup>130</sup> Once again, it also stressed the “unconditional obligation assumed by the Russian Federation under Article 46 of the Convention to abide by the judgments” of the Court<sup>131</sup>, expressed “grave concern at the continued non-implementation of the remaining parts of the just satisfaction judgment” and encouraged the authorities and the secretariat to reinforce their cooperation with a view to finding solutions in this respect.<sup>132</sup> As regards the outstanding action plan, the Committee of Ministers invited the authorities to submit it for 1 December 2019.<sup>133</sup>

<sup>122</sup> See the communications by the Russian authorities, [DH-DD\(2019\)123](#) of 4 February 2019, p. 2. See also [DH-DD\(2019\)1299](#) of 7 November 2019.

<sup>123</sup> For more details, see the notes prepared for the 1324<sup>th</sup> meeting (DH) (18-20 September 2018), [CM/Notes/1324/H46-17](#).

<sup>124</sup> Application No. 30003/04, judgment of 23 October 2018.

<sup>125</sup> Decision adopted at the 1362<sup>nd</sup> meeting (DH), [CM/Del/Dec\(2019\)1362/H46-22](#), 5 December 2019, item 3.

<sup>126</sup> *Ibid*, items 4 and 5.

<sup>127</sup> *Ibid*, item 6.

<sup>128</sup> *Mozer v. the Republic of Moldova and Russia*, application No. 11138/10, judgment of 23 February 2016 (Grand Chamber). The Court only found violations of the Convention in respect of Russia.

<sup>129</sup> Application No. 14902/04, judgments of 20 September 2011 (on the merits) and 31 July 2014 (just satisfaction).

<sup>130</sup> Decision adopted at the 1340<sup>th</sup> meeting (DH), [CM/Del/Dec\(2019\)1340/H46-20](#), 14 March 2019, paragraph 2.

<sup>131</sup> *Ibid*, paragraph 1.

<sup>132</sup> *Ibid*, paragraph 3.

<sup>133</sup> *Ibid*, paragraph 4.

## 11. Other cases under the enhanced supervision

53. The *Finogenov and Others* and the *Tagayeva and Others* judgments<sup>134</sup> are related to material and procedural violations of Article 2 of the Convention. The first case concerns the violation of the authorities' positive obligation to protect life on account of the inadequate planning and conduct of the rescue operation in October 2002 following the taking of hostages by Chechen terrorists in the Dubrovka theatre (Moscow) and the authorities' failure to conduct effective investigations into this operation. The second case is related to the hostage-taking crisis in a school in Beslan (North Ossetia) in 2004. The last examination of these cases by the Committee of Ministers dates back to the 1265<sup>th</sup> meeting (DH) (20-21 September 2016).<sup>135</sup>

54. The Committee of Ministers also examines the *Dobriyeva and Others v. Russia*<sup>136</sup> case concerning the lack of an effective investigation into the disappearance, in December 2009, of the applicants' four relatives from Ingushetia in St Petersburg as well as the case *Mazepa and Others*<sup>137</sup> concerning the ineffectiveness of the investigation into the murder of journalist Anna Politkovskaya (procedural violations of Article 2).

55. The *Kolyadenko and Others*<sup>138</sup> judgment concerns the failure by the State to discharge its positive obligation to protect lives in the context of a large-scale flood in the area around the Pionerskoye reservoir near Vladivostok in 2001, the lack of an effective investigation in that respect (violations of the substantive and procedural limb of Article 2) and the violation of the applicants' right to respect for their homes and property (violation of Article 8 and Article 1 of Protocol No. 1).

56. The *Navalnyy and Ofitserov*<sup>139</sup> case concerns the arbitrary criminal conviction of the applicants, an opposition leader and a businessman, in July 2013 in a case concerning the alleged defrauding of the Kirovles timber company (violation of Article 6 para. 1). The Court found that the criminal law had been construed unforeseeably and arbitrarily to the applicants' detriment, and that the domestic courts had thus found them guilty of acts indistinguishable from regular commercial activities. The Committee of Ministers examined this case for the last time at its 1302<sup>nd</sup> meeting (DH) in December 2017.<sup>140</sup>

57. Shortcomings in the legal framework surrounding secret surveillance activities carried out in the context of operational activities are being examined in the group of the cases *Roman Zakharov v. Russia*.<sup>141</sup> The *Roman Zakharov* case concerns the interference with the applicant's right to respect for his private life and correspondence in the early 2000's based on domestic legislation establishing a system of secret surveillance according to which any person using the mobile telephone services of Russian providers could have his or her mobile telephone communications intercepted, without ever being notified of the surveillance (violation of Article 8). Four other cases - *Zubkov and Others*, *Dudchenko*, *Moskalev* and *Konstantin Moskalev*<sup>142</sup> - concern secret surveillance measures applied between 2000 and 2010 in the context of criminal proceedings. The last examination of these cases took place at the 1324<sup>th</sup> meeting (DH) (18-20 September 2018)<sup>143</sup>. The Committee of Ministers also examines three cases concerning violations of Article 8 due to the absence of a legal framework securing prompt response to international child abduction (see *Hromadka and Hromadkova*<sup>144</sup> and two similar cases).

58. Two other cases - *Jehovah's Witnesses of Moscow and Others*<sup>145</sup> and *Krupko and Others*<sup>146</sup> - mainly concern violations of the right of to religious freedom of Jehovah's Witnesses in Russia (violations of Article 9)

<sup>134</sup> *Finogenov and Others v. Russia*, application No. 18299/03, judgment of 20 December 2011 and *Tagayeva and Others v. Russia*, application No. 26562/07, judgment of 18 September 2017.

<sup>135</sup> See [decision](#) adopted at 1265<sup>th</sup> meeting (DH).

<sup>136</sup> Application No. 18407/10, judgment of 19 December 2013.

<sup>137</sup> Application No. 15086/07, judgment of 17 July 2018.

<sup>138</sup> Application No. 17423/05, judgment of 28 February 2012.

<sup>139</sup> Application No. 46632/13, judgment of 23 February 2016.

<sup>140</sup> [CM/Del/Dec\(2017\)1302/H46-24](#), 7 December 2017.

<sup>141</sup> Application No. 47143/06, judgment of 4 December 2015.

<sup>142</sup> *Zubkov and Others v. Russia*, application No. 29431/05, *Dudchenko v. Russia*, application No. 37717/05, *Moskalev v. Russia*, application No. 44045/05, *Konstantin Moskalev v. Russia*, application No. 59589/10, judgments of 7 November 2017.

<sup>143</sup> [CM/Del/Dec\(2018\)1324/19](#), 20 September 2018.

<sup>144</sup> Application No. 22909/10, judgment of 11 December 2014.

<sup>145</sup> Application No. 302/02, judgment of 10 June 2010.

<sup>146</sup> Application No. 26597/07, judgment of 26 June 2014.

and were examined for the last time by the Committee of Ministers at its 1355<sup>th</sup> meeting (DH) in September 2019.<sup>147</sup>

59. The *Kudeshkina v. Russia*<sup>148</sup> case concerns a violation of the applicant's right to freedom of expression due to her dismissal in 2004 from judicial office for making critical statements about the judiciary in the media during her parliamentary election campaign in 2003 while on leave from her post as judge (violation of Article 10). The Committee of Ministers examined it for the last time at its 1348<sup>th</sup> meeting (DH) in June 2019.<sup>149</sup> Moreover, in the *Dmitriyevskiy*<sup>150</sup> judgment the Court found a violation of Article 10 due to unjustified conviction of a newspaper editor-in-chief for publishing articles allegedly written by Chechen separatists.

60. The *Berkovich and Others v. Russia*<sup>151</sup> judgment concerns unjustified international travel restrictions on account of access to State secrets during employment in the past (violation of Article 2 of Protocol No. 4). Under Article 46, the Court recalled that the repeal of restrictions on international travel for private purposes was a condition for the Russian Federation's membership of the Council of Europe, a condition which had not been fulfilled to date, i.e. for more than twenty-two years. The Committee of Ministers examined this case for the first time at its 1362<sup>nd</sup> meeting (DH) in December 2019.<sup>152</sup>

## 12. Concluding remarks

61. The ineffective implementation of the Court's judgments by the Russian Federation is a matter of State's accountability. This is particularly evident when State authorities seem unable to provide effective remedies, as required in Article 13 of the Convention. Moreover, it seems that the authorities are unwilling to remedy the precarious situation of people in pre-trial detentions. More generally, the detention system is deficient. This is an important cause for concern as the lack of improvement in this respect and of remedies may lead to further violations of the right of liberty and prohibition of torture and inhuman and degrading treatment, as defined respectively in Articles 5 and 3 of the Convention. Additionally, the lack of effective investigation into cases of ill-treatment is also an issue of great concern and confirms the unwillingness of the authorities to remedy the situation.

62. In addition, it is clear that the important period during which the Russian Federation distanced itself from the Assembly (between January 2016 and June 2019) was lost from the perspective of implementation of the Court's judgments. Without wishing to take sides or to say who is to blame, I would like to note that it becomes even more difficult to recover the time lost, bearing in mind the structural problems already mentioned in this document.

63. Moreover, I would like to stress that it is important to involve different advocacy groups in the implementation of the Court's judgments. Grassroot culture must take effect in order to produce a change in mentalities at all levels of society.

<sup>147</sup> CM/Del/Dec(2019)1355/H46-19, 25 September 2019.

<sup>148</sup> Application 29492/05, judgment of 26 February 2009.

<sup>149</sup> [CM/Del/Dec\(2019\)1348/H46-25](#), 6 June 2019.

<sup>150</sup> Application No. 42168/06, judgment of 3 October 2017. The Committee of Ministers also examines four similar cases.

<sup>151</sup> Application No. 5871/07, judgment of 27 March 2018.

<sup>152</sup> CM/Del/Dec(2019)1362/H46-21, 5 December 2019.